

FSASE 2014 Summer Conference



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Selected Topics and Recent Changes to Florida's Election Code



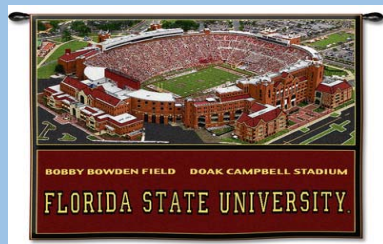
Pre-Election & General Provisions

Early Voting (EV) Times

(s. 101.657(1), F.S. – eff. 1/1/2014)



- Expands minimum hours per day from 6 to 8 hours (maximum hrs/day remain 12)
- EV shall begin on 10th day & end on 3rd day before election that contains state or federal races (no change)
- Plus, additional days now possible: EV at the discretion of the SOE on 15th, 14th, 13th, 12th, 11th, or 2nd day before an election that contains state or federal races



Early Voting Sites

(s. 101.657(1), F.S. – eff. 1/1/2014)



- **Expanded** existing permissible sites to also include fairground, civic center, courthouse, county commission building, stadium, convention center, government-owned senior center, or government-owned community center.
 - **Sites must also be geographically located to provide all voters equal opportunity to cast ballot.**
- In addition, SOE may designate one additional site per election in an area of the county that does not have an eligible early voting location.
 - **This site must be geographically located to provide all voters in that area with an equal opportunity to cast a ballot.**
- Each county must have at a minimum the same number of early voting sites for a general election it operated for the 2012 general election.

Exception for Late Registrations relating to Book Closing Date (s. 97.0555, F.S.)



Prior law: The following persons have until 5pm on Friday before the election to register in the SOE's office:

- Individual or accompanying family member who has been discharged or separated from:
 - Uniformed services,
 - Merchant Marine, or
 - from employment outside territorial limits of the U.S.

Expanded Late Registrations re: Book Closing Date (s. 97.0555, F.S. – eff. 1/1/2014)

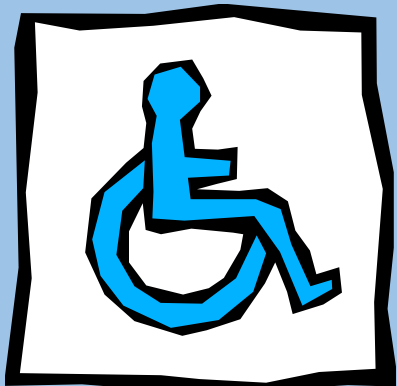
Expands exception for registration after book closing to also include:



- **An individual or accompanying family member who has returned from a military deployment or activation.**

Extension of Time to Accommodate Voters with Disabilities

(s. 101.56075(3), F.S.) – eff. 1/1/2014



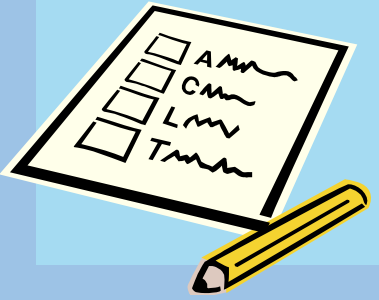
Persons with disabilities must be able to vote on devices that meet HAVA voter accessibility requirements by 2020, not 2016.

⇒ This means all voting must be done via marksense ballots using a marking device to designate ballot selections on January 1, 2020.

Multi-Language Ballots

(s. 101.151(8), F.S.) – eff. 1/1/2014

In counties subject to multi-language ballot requirements, the SOE may petition the U.S. Department of Justice for authorization to print and deliver single-language ballots for each minority language required.



Specifications for Ballots

(s. 101.151(2), F.S. – eff. 7/1/2013)

- **Office Title for Clerk of the Circuit Court for placement on the ballot:**
 - Clerk of the Circuit Court; or
 - Clerk of the Circuit Court and Comptroller when the Clerk also serves as the County Comptroller, when authorized by law.
- **See email from Gary Holland to SOEs, Wednesday, July 31, 2013 8:57 AM**
- **Currently, 1st bullet applies to Broward, Clay, DeSoto, Duval, Miami-Dade, Orange, Osceola, and Volusia counties; 2nd bullet applies to all other counties.**

Ballot Layout

- Besides Clerk of Court designation, no other required changes in ballot layout format from what existed for 2012 general election.
- Section 101.151, F.S., controls over Rule 1S-2.032.
 - **Draft rule text (minus forms) is on Division's SOE website – we welcome comments before rulemaking begins. Official rulemaking process will not occur until after the general election.**
- Minimum font size is 10 point type.
- If SOE needs to deviate from requirements of the rule, SOE must first obtain approval from the Division. SOE must:
 - **Certify the facts necessitating the deviation; and**
 - **Provide a copy of the proposed ballot.**

Election Preparation Report

(s. 100.032, F.S.) – eff. 1/1/2014

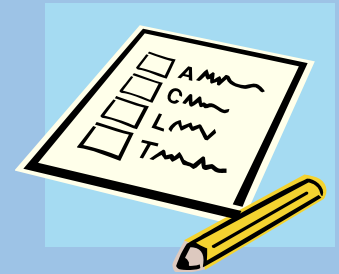
SOE must post a report on SOE's official website at least **3 months*** before a **general election**.

Report must outline preparations for the upcoming **general election** and include **at a minimum**:

- Anticipated staffing levels during early voting, on election day, and after election day
- Anticipated amount of automated tabulating equipment at each early voting site and polling place.
- ***Deadline for posting in 2014 = August 4th.**

Absentee Ballots

(s. 101.62, F.S. – eff. 1/1/2014)

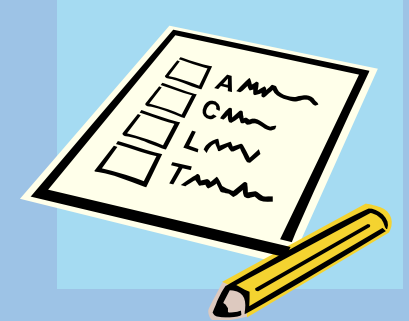


New provisions:

- **(1)(b):** A request for absentee ballot to be mailed to an address other than the one on file in FVRS must be in writing and signed by the voter.
 - **Exception:** Absent uniformed service voter or an overseas voter is not required to have signed, written request for ballot to be mailed to different address.
- **(3):** When SOE receives absentee ballot, if voter's signature is missing on the voter's certificate, the SOE must record such along with usual absentee ballot data and upload daily.

Absentee Ballots

(s. 101.62, F.S.)



Interaction with other law:

- **New law:** A request for absentee ballot to be mailed to an address other than the one on file in FVRS must be in writing and signed by the voter (except as noted on prior slide).
- **Current law:** Section 97.1031, F.S., permits voter within the state to change address by phone or electronic means (if DOB is provided)
- **Interaction:** Nothing prevents voter from first changing address in FVRS and then requesting ballot to be sent to new FVRS address without a need to have a signed writing.

Early Voting and Absentee Ballot Upload

(s. 102.141(4)(a), F.S. – eff. 1/1/2014)

- SOE must upload early voting results and results of absentee ballots tabulated by end of early voting period into county's election management system
- Upload must be **by 7 pm on the day before the election day**. Such tabulation may not be made public before the closing of polls on Election Day.

Absentee Ballots

(s. 104.0616, F.S. – eff. 1/1/2014)



Any person who provides or offers to provide, and any person who accepts, a pecuniary or other benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two absentee ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member,* commits a misdemeanor of the first degree.

*“Immediate family member” = person’s spouse, or the parent, child, grandparent, or sibling of the person or person’s spouse.

Absentee Ballots (s. 104.0616, F.S.)

- **The person's possession must be tied to the phrase:** “*in exchange for* distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing” the ballots
- ***I.E., the Statute requires a “quid pro quo:”***
“something for something” must exist – *e.g.*, “If you give me \$5, I will deliver your ballot for you” or “If the campaign pays me \$50, I will collect absentee ballots on Apple Street.”

Absentee Ballots (s. 104.0616, F.S.)

Examples:

1. An unpaid volunteer who merely collects and delivers > 2 absentee ballots on behalf of a campaign would not violate the section even though the voter receives a benefit of free ballot delivery.

- Reason: The volunteer is not receiving any benefit “in exchange for” collecting, distributing, *etc.*

2. A paid campaign worker collecting absentee ballots from voters would violate the law.

- Reason: The worker is receiving a benefit (payment) “in exchange” for collecting and delivering the ballots.

Proposed Constitutional Amendments for 2014 Ballot to date

- Amendment #1 (Initiative Petition): Water and Land Conservation - Dedicates funds to acquire and restore Florida conservation and recreation lands
- Amendment #2 (Initiative Petition): Use of Marijuana for Certain Medical Conditions
- Amendment #3 (Joint Resolution): Prospective Appointment of Certain Judicial Vacancies

Elections

Presidential Preference Primary (s. 103.101(1), F.S. – eff. 1/1/2014)

- **Prior law:** PPP Date Selection Committee sets date between first Tuesday in January and first Tuesday in March (for 2012, it was January 31)



- **New law:** PPP to be held on first Tuesday that party rules provide that state delegations to be allocated in a winner-take-all manner without the party imposing any penalty on the delegations.

If party rules remain unchanged for 2016, next PPP = March 1, 2016.

Primary Election Date

(s. 100.061, F.S., eff. 1/1/20014)

Prior law: Date of Primary Election 12 weeks before the general election.

Now: Date of Primary Election 10 weeks before the general election.

(Primary election is scheduled for August 26, 2014; not August 12th.)

Canvassing Board Composition

(s. 102.141(1)(e), F.S. – eff. 1/1/2014)

Alternate members shall be appointed:

- Chief Judge to appoint an additional county judge (if judge not available, then a qualified voter of county not otherwise disqualified to serve)
- Chair, County Commission to appoint an additional county commissioner (if commissioner not available, then a qualified voter of county not otherwise disqualified to serve)

Canvassing Board Composition

(s. 102.141(1)(e), F.S.)

- If canvassing board member is unable to participate in a meeting, the canvassing board chair shall designate which alternate member will serve for that meeting.
- An alternate member may be present, observe, and communicate with the 3 primary canvassing board members, but may not vote in the board's decisions.
- Also, normal substitute process remain in statute in event substitute is needed.

Absentee Ballots

(s. 101.62(4)(c)5., F.S. – eff. 1/1/2014)



- SOE may not deliver absentee ballot on the day of the election unless an emergency precludes the voter from going to the voter's assigned polling place.
- If absentee ballot is delivered, affidavit must be executed affirming to facts which permit delivery.
- **Exception:** Voters residing in an assisted living facility (s. 101.655, F.S.),
- **Affidavit** -- see Form DS-DE 136, Rule 1S-2.052

Overseas Absentee Ballots

(ss. 101.65, 101.67, 101.68, 101.6923,
& 101.6952(5), F.S. – eff. 1/1/2014)

Prior law (based on Rule 1S-2.013):

- 10 extra days from election day to receive overseas absentee ballot in Presidential Preference Primary or General election
- Postmarked or signed and dated no later than election day
- Only federal races counted (as long as ballot otherwise proper)

New law (codifies rule); plus:

- All races on ballot must now be counted (as long as ballot otherwise proper)



10-day Extension for Overseas Absentee Ballots (cont'd)

- 10-day extension for overseas absentee ballots also applies to:
 - Special Primary Elections; and
 - Special Elections
- Reason: Section 100.191, F.S. – “All laws that are applicable to general elections are applicable to special elections or special primary elections to fill a vacancy in office or nomination.”

Unsigned Absentee Ballot Voter's Certificate (s. 101.68(4)(b), F.S. – eff. 1/1/2014)

Absentee voter has opportunity to cure unsigned returned absentee ballot before it is canvassed:

- Must sign “cure” affidavit (located in s. 101.68(4)(c), F.S.)
- Provide copy of ID by returning signed affidavit. (See next slide for ID requirements)
- Must provide affidavit and copy of ID by deadline before election day
- Return in person, by fax, by email or by mail

“The Cure” - *Acceptable IDs*

(s. 101.68(4)(d), F.S.)

Acceptable forms of ID to accompany “unsigned ballot cure’ affidavit”:

1. ID that includes name & photo: U.S. passport; debit or credit card; military ID; student ID; retirement center ID; neighborhood association ID; or public assistance ID; or
2. ID that shows name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (*excluding voter ID card*)

NOTE: Driver’s License? – Omitted from #1, but fits under #2 as a government document if name and current address is accurate

“The Cure” - Conflict in law about deadline

- Subsection (4)(b) (**substantive law**):
Until 5pm on the day before the election.
- Subsection (4)(d)(**instructions for form**):
No later than 5 pm on 2nd day before the election
- ❖ **DOE direction:** Modify ballot instructions to comport with deadline in Subsection (4)(b) - 5 pm on day before election day

“The Cure” - Other duties

- SOE must attach affidavit and copy of ID received to the corresponding absentee ballot envelope.
- DOE and each SOE must include the affidavit form and instructions on their websites, to include SOE office’s mailing address, email address, and fax number.

“The Cure” - How is voter notified of unsigned ballot before ballot is canvassed?

- ➔ SOE opts to notify voter (not required by law)
- ➔ Candidates and political committees notify their voter constituency through access to information on the uploaded absentee ballot request file that indicates voter returned return ballot without signature
- ➔ Voter finds out through online ballot tracking system if SOE incorporates this information into system

Absentee Ballot Signature Comparison

(s. 101.68(1) & (2), F.S. – eff 1/1/2014)

Must compare voter's signature on voter's certificate or on absentee ballot affidavit to voter's signature in registration books or on the precinct register



Rejected Absentee Ballot

(s. 101.68(4), F.S. – eff. 1/1/2014)



Prior law:

- Notify voter if ballot rejected due to signature mismatch
- Send voter an application in all cases in which ballot rejected.

New law:

- Still notify voter but include specific reason why ballot rejected
- Send voter an application only in cases where signature differed.

Federal Write-In Absentee

Ballot (ss. 101.6952, 102.161, F.S., & Rule 1S-2.051)

- Emergency back-up for UOCAVA voters
- May be used for federal, state, and local elections involving 2 or more candidates.
[Note: 2014 legislation to allow it apply to initiatives and judicial retention races failed.]
- Cannot be canvassed until 7pm on Election Day (to wait for possibility of returned official regular ballot).
- See Rule 1S-2.051 (eff. 11/28/2013) for determination of voter intent.

Election Day

No Solicitation Zone

(s. 102.031(4) F.S. – eff. 11/1/2013)



1. 100-foot zone applies to entrance to:
 - Any Polling place;
 - A polling room where the polling place is also a polling place;
 - An early voting site; and
 - An office of the SOE where absentee ballots are requested & printed on demand for the convenience of voters who appear in person to request them. [New provision.]
2. Except as specified in the law, the SOE may not designate a no-solicitation zone or otherwise restrict persons or groups from soliciting voters at a polling place or early voting site. [New provision.]

Change of Residence

(s. 101.045(2)(a), F.S. – eff. 1/1/2014)



- When voter moves his/her legal residence, the voter may vote a regular ballot in the precinct where new legal residence is located if:
 1. Change is within the same county; or
 2. Voter is an active uniformed services voter or a member of his or her family; or
 3. The new precinct is within a county that uses an electronic database as a precinct register at the polling place. [#3 = New]

Post-Election

Post-Election Voting

System Audit (s. 101.591(1), F.S. – eff. 1/1/2014)



Law now provides option to conduct automated, independent audit (AIA) instead of manual audit. AIA consists of:

- Automated tally of *votes casts in every race* on the ballot.
- *In at least 20% of precincts* chosen at random by canvassing board at publicly noticed meeting.
- Must include election day, early vote, absentee, provisional, and overseas ballots.

Automated Independent Audit System (cont'd)

Must be pre-approved for use by the Division of Elections based on criteria in statute & Rule 1S-5.026 (eff. 3/20/2014):

- Completely independent of primary voting system
- Fast enough to produce the final audit results by 11:59 pm on 7th day following the certification of results by canvassing board
- Capable of demonstrating that the ballots of record have been accurately adjudicated by the audit system.

Constitutional Amendments Proposed by the Legislature

Constitutional Amendments by Joint Resolution: Word Limit (s. 101.161(3), F.S. – eff. 1/1/2014)



Prior law:

- No word limit on ballot summary
- Presumption was that full text = clear and unambiguous statement of the amendment

New law:

- Deletes ‘clear and unambiguous’ presumption
- 75-word limit exists only on 1st ballot summary
- 75-word limit does not apply to summary rewritten by Attorney General

Constitutional Amendments by Joint Resolution -- Coded Text Requirement (s. 101.56075(4), F.S. – eff. 1/1/2014):

Prior law: Voting machines must be capable of handling coded text of amendments on ballot by December 31, 2013.

New law: Provision is entirely repealed.

MISCELLANEOUS

Possible New Public Records Exemptions

- **CS/SB 390**. It becomes effective upon becoming law. The exemption expands the existing exemption available to Department of Health personnel to include those whose duties involve determinations of social security disability benefits, complaints against health care practitioners, and inspection of health care facilities. (Not yet presented to the Governor)
- **CS/CS/SB 238**. Upon becoming law, it is effective October 1, 2014. The exemption expands upon an existing exemption available current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel to include the names of their spouses and children. (Not yet presented to the Governor)

Campaign Finance and Ethics

CE Form 6 [SB 846 – 2014 Session]

- If it becomes law, effective July 1, 2014:
- If it becomes law, will change the requirement of qualifying officer sending all qualified candidates CE Form 6's to Florida Commission on Ethics (enacted in 2013) to only sending those candidates who currently occupy offices that require the filing of the CE Form 6.
- Deadline for submission to Commission on Ethics: July 1st
- Not yet presented to the Governor

Statewide Campaign Finance Electronic Filing System

- Division of Elections (DOE) presented proposal in November 2013.
- DOE briefed Senate and House on proposal during 2014 legislative session.
- No legislation on proposal.

The End --

Any Questions

